

UNITED STATES DISTRICT COURT
For the District of Massachusetts

ITV DIRECT, INC.,)
)
)
Plaintiff,)
)
)
v.)
)
HEALTHY SOLUTIONS, LLC, ET. AL.,)
)
)
Defendants.)

CAPPSEALS, INC.,)
)
)
Plaintiff-in-Intervention)
)
)
v.)
)
HEALTHY SOLUTIONS, LLC, D/B/A)
DIRECT BUSINESS CONCEPTS; ITV)
DIRECT, INC. AND DIRECT)
FULFILLMENT, LLC.)
)
)
Intervenor-Defendants.)
)
)

C. A. No. 04-CV10421-JLT

EXHIBIT 4

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ITV DIRECT, INC.,
Plaintiff,
v.
HEALTHY SOLUTIONS, L.L.C., et al.,
Defendants.
CAPPSEALS, INC.,
Plaintiff-in-Intervention,
v.
HEALTHY SOLUTIONS, L.L.C., d/b/a
DIRECT BUSINESS CONCEPTS; ITV
DIRECT, INC.; and DIRECT
FULFILLMENT, LLC,
Intervenor-Defendants.

Civil Action No. 04-CV-10421-JLT

JOINT STIPULATIONS OF FACT

The parties to the above-captioned action, by and through their counsel, do hereby stipulate and agree as follows:

1. On October 8, 2003, ITV Direct, Inc. ("ITV") issued a "standing purchase order" to Healthy Solutions, L.L.C. ("Healthy Solutions") requesting shipment of 160,000 bottles of Supreme Greens per month to be shipped to Direct Fulfillment;
2. On November 21, 2003, ITV issued a purchase order to Healthy Solutions, requesting shipments of 50,000 bottles of Supreme Greens per week;
3. In or around December 19, 2003, Direct Fulfillment received 50,004 bottles of Supreme Greens;
4. In or around December 29, 2003, Direct Fulfillment received 50,012 bottles of Supreme Greens;

5. In or around December 31, 2003, ITV Direct Inc. received invoice #21 from Direct Business Concepts ("DBC") indicating that ITV owed \$300,078.00 for the December 29, 2003 shipment of Supreme Greens;

6. Neither ITV nor any of its related entities has paid Invoice #21;

7. In or around January 5, 2004, Direct Fulfillment received 30,912 bottles of Supreme Greens;

8. In or around January 9, 2004, ITV received Invoice #22 from Direct Business Concepts indicating that ITV owed \$185,472.00 for the January 5, 2004 shipment of Supreme Greens;

9. Neither ITV nor any of its related entities has paid Invoice #22;

10. In or around January 14, 2004, Direct Fulfillment received 49,920 bottles of Supreme Greens capsules and 4,032 jars of Supreme Greens powder;

11. In or around January 14, 2004, ITV received Invoice #23 from Direct Business Concepts indicating that ITV owed \$323,712.00 for the January 14, 2004 shipment of Supreme Greens;

12. Neither ITV nor any of its related entities has paid Invoice #23;

13. In or around January 21, 2004, Direct Fulfillment received 57,600 bottles of Supreme Greens capsules and 5,091 jars of Supreme Greens powder;

14. In or around January 21, 2004, ITV received Invoice #24 from Direct Business Concepts indicating that ITV owed \$376,146.00 for the January 21, 2004 shipment of Supreme Greens;

15. Neither ITV nor any of its related entities has paid Invoice #24;

16. In or around January 29, 2004, Direct Fulfillment received 48,000 bottles of

Supreme Greens capsules and 5,036 jars of Supreme Greens powder;

17. In or around January 29, 2004, ITV received Invoice #25 from Direct Business Concepts indicating that ITV owed \$318,216.00 for the January 29, 2004 shipment of Supreme Greens;

18. Neither ITV nor any of its related entities has paid Invoice #25;

19. In or around February 5, 2004, Direct Fulfillment received 48,000 bottles of Supreme Greens capsules and 5,040 jars of Supreme Greens powder;

20. In or around February 6, 2004, ITV received Invoice #26 from Direct Business Concepts indicating that ITV owed \$318,240.00 for the February 5, 2004 shipment of Supreme Greens;

21. Neither ITV nor any of its related entities has paid Invoice #26;

22. For each of the Supreme Greens shipments between December 29, 2004 through February, 2004, upon delivery, Direct Fulfillment took physical custody of the goods and had a reasonable opportunity to inspect the Supreme Greens it received;

23. ITV had a reasonable opportunity to inspect the Supreme Greens Direct Fulfillment received between December 29, 2004 through February, 2004;

24. ITV never rejected any of the Supreme Greens contained in the six shipments Direct Fulfillment received between December 29, 2004 through February, 2004;

25. Direct Fulfillment never rejected any of the Supreme Greens contained in the six shipments it received between December 29, 2004 through February, 2004;

26. ITV never tendered back to Healthy Solutions or Cappseals any of the Supreme Greens contained in the six shipments Direct Fulfillment received between December 29, 2004 through February, 2004;

27. Direct Fulfillment never tendered back to Healthy Solutions or Cappseals any of the Supreme Greens contained in the six shipments it received between December 29, 2004 through February, 2004;

28. ITV did not provide notice to Healthy Solutions or Cappseals of its intent to reject any of the Supreme Greens contained in the six shipments Direct Fulfillment received between December 29, 2004 through February, 2004;

29. Direct Fulfillment did not provide notice to Healthy Solutions or Cappseals of its intent to reject any of the Supreme Greens contained in the six shipments it received between December 29, 2004 through February, 2004;

30. ITV has sold units of the Supreme Greens contained in the six shipments it received between December 29, 2004 through February, 2004;

31. ITV continues to sell units of the Supreme Greens contained in the six shipments it received between December 29, 2004 through February, 2004;

32. As of August 23, 2004 Donald Barrett was still taking Supreme Greens;

33. In total, Direct Fulfillment received 284,444 bottles of Supreme Greens capsules and 19,199 jars of Supreme Greens powder between December 29, 2003 through around February 6, 2004;

34. In total, ITV was invoiced \$1,821,864.00 for the six shipments of Supreme Greens Direct Fulfillment received between December 29, 2003 through around February 6, 2004;

35. As of February 13, 2004 Direct Fulfillment had 333,918 units of Supreme Greens in inventory;

36. By August 23, 2004 Direct Fulfillment had less than 100,000 units of Supreme

Greens in inventory; and

37. Between February 13, 2004 and August 23, 2004 ITV sold more than 200,000 units of Supreme Greens.

Respectfully submitted,
CAPPSEALS, INC.
By its attorneys,

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DIRECT FULFILLMENT, LLC
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Dated: May 26, 2005

Certificate of service

I hereby certify that a true and accurate copy of the foregoing was served on the attorneys of record pursuant to Fed. R. Civ. P. 5 as follows:

Via electronic notification:

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DATED: May 26, 2005